

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



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February 22, 2017

Elizabeth Trickey, General Counsel
Department of Public Safety
Post Office Box 1628
Santa Fe, New Mexico 87504-1628

Re: Inspection of Public Records Act Complaint – Department of Public Safety

Dear Ms. Trickey:

We have reviewed the complaint submitted by Danielle Romero-Jimenez alleging that the Department of Public Safety (“DPS”) violated the Inspection of Public Records Act, NMSA 1978, §§ 14-2-1 to -12 (as amended through 2013) (“IPRA”), by failing to provide any records in response to her requests to inspect public records. We also have reviewed your response, on behalf of DPS, to our inquiry regarding the complaint, *See* letter from Elizabeth Trickey, General Counsel, DPS (Oct. 31, 2016) (via email) (“DPS’s Response”). Based on our review, as discussed in more detail below, while it appears that DPS did not violate the letter of IPRA, we believe that once DPS determined that her inspection request was excessively burdensome and broad, DPS should have provided Ms. Romero-Jimenez with specific information about how much additional time it required to respond.

According to her complaint, Ms. Romero-Jimenez submitted requests to inspect public records by email on August 23, 2016 and August 30, 2016. As written, the requests ask to inspect a potentially large number of email communications and other records. As of the date of the complaint, on or about September 27, 2016, DPS had not provided Ms. Romero-Jimenez with any public records responsive to her request.

DPS’s Response includes copies of correspondence with Ms. Romero-Jimenez showing that DPS acknowledged Ms. Romero-Jimenez’ requests on August 23 and August 31, 2016, respectively.

On September 7, 2016, DPS emailed Ms. Romero-Jimenez a letter stating that DPS was working on her August 23 request “but due to the over burdensome nature of the request additional preparation time is required for receiving all proper documentation.” On September 14, 2016, DPS emailed Ms. Romero-Jimenez a similar letter stating that it required additional time to respond to her August 30 request due to its “over burdensome nature.” On October 31, 2016, DPS provided some records responding to Ms. Romero-Jimenez’ August 30 request. According to the cover letter accompanying the records, DPS provided most of the records requested but was continuing to determine if there were additional responsive records that might be provided. *See* letter to Danielle Romero from Regina Chacon, Records Custodian, DPS (Oct. 31, 2016) (via email). As of October 31, 2016, DPS stated that it was still working on Ms. Romero-Jimenez’ August 23 request. *See* DPS’s Response, p. 2. On February 15, 2017, DPS stated that they had fulfilled Ms. Romero-Jimenez’ IPRA request. *See* letter from Nieto, IPRA Coordinator, DPS (via email).

IPRA requires a records custodian who receives a written request for public records to “permit the inspection immediately or as soon as is practicable under the circumstances, but not later than fifteen days after receiving [the] written request.” NMSA 1978, § 14-2-8(D). If the records custodian determines that the request is “excessively burdensome or broad,” IPRA provides that:

an additional reasonable period of time shall be allowed to comply with the request. The custodian shall provide written notification to the requester within fifteen days of receipt of the request that additional time will be needed to respond to the written request. The requester may deem the request denied and may pursue the remedies available pursuant to [IPRA] if the custodian does not permit the records to be inspected in a reasonable period of time.

NMSA 1978, § 14-2-10. It appears that DPS timely notified Ms. Romero-Jimenez that her requests were excessively burdensome or broad. The notification stated that DPS required additional time to respond, but did not inform Ms. Romero-Jimenez when DPS would permit inspection. On its face, Section 14-2-10 does not require a public body to specify the date on which it intends to respond to an excessively burdensome or broad inspection request. Nevertheless, as is evident from the complaint, DPS’s failure to specify a date made Ms. Romero-Jimenez uncertain about when, if ever, DPS intended to respond to her inspection requests. This uncertainty led Ms. Romero-Jimenez to conclude, in effect, that DPS had not permitted inspection in a “reasonable period of time,” deem the requests denied and submit her complaint alleging DPS violated IPRA.

As here, a public body that does not specify the “reasonable amount of time” it needs to comply with a request determined to be excessively burdensome or broad leaves to the requester the determination of what period of time is “reasonable.” The requester’s sense of the time needed to respond will not necessarily correspond to the public body’s determination of the time it will need to locate and review records responsive to a significantly broad or burdensome request. For this

reason, we recommend that a public body “specify in the notification to the requester how much additional time will be necessary to comply. This will give the requester an idea of what the public body considers reasonable for compliance.” Attorney General’s IPRA Compliance Guide, p. 38 (8th ed. 2015) (available on the Office of Attorney General’s website at www.nmag.gov). *See also id.* at 44, Appendix II, Form IV (“Excessively Burdensome Letter”).

Although it appears that DPS did not violate IPRA as alleged in the complaint, we believe DPS can avoid future complaints similar to Ms. Romero-Jimenez’ if its notifications under Section 14-2-10 include specific dates for compliance with excessively burdensome or broad requests. With regard to Ms. Romero-Jimenez’ requests, we note that as of DPS’s February 15, 2017 email to our office stated that DPS has now fulfilled M.s Romero-Jimenez’ IPRA request. As such, we will consider this matter resolved.

If you have any questions about this determination or IPRA in general, please let me know.

Sincerely,

A handwritten signature in blue ink that reads "Dylan K. Lange". The signature is written in a cursive style with a large, stylized "D" and "L".

Dylan K. Lange
Assistant Attorney General

cc: Danielle Romero-Jimenez

INSPECTION OF PUBLIC RECORDS ACT ("IPRA") COMPLAINT FORM
New Mexico Office of the Attorney General
Open Government Division

YOUR CONTACT INFORMATION:

First Name: Danielle Last Name: Romero-Jimenez
Address: [REDACTED]
City: [REDACTED] State: [REDACTED] Zip Code: [REDACTED]
Phone Number: [REDACTED]
Email: [REDACTED]

IPRA REQUEST TO THE PUBLIC BODY:

Name of the Public Body that is the subject of this complaint (including city/town, county or region, if applicable): New Mexico State Police

Format of IPRA Request: Written Oral

Date IPRA Request was Submitted to the Public Body: 8-23-16 @ 8:29 am
8/30/2016 @ 10:45 (9/2/16 no response)

Date of all Responses Received from the Public Body: 8/23/16 - 8/31/16
(9/7/16 extension letter with no date)

ALLEGED VIOLATIONS OF IPRA BY THE PUBLIC BODY: Please select from the following list the violations you allege the public body committed. Check all that apply.

RECORDS:

- No records were provided.
- The agency provided some but not all of the records responsive to the request.
- Records were provided, but they were not responsive to the request.
- The public body does not have custody or responsibility for the records, and the records custodian did not forward the request to the proper custodian.
- The request was for records in electronic format and although the records are available in electronic format, the copies of the public records were not provided in an electronic format.

DENIED REQUESTS TO INSPECT PUBLIC RECORDS

- Although some records were provided, the custodian did not include a written explanation for denying the production of exempt records or for redacting confidential information from records.
- No records were provided and the records custodian did not deliver or mail a written explanation to the requester within fifteen (15) calendar days after receiving the request that included a description of the records sought, the names and titles of each person responsible for denying the request, and a description of the reasons for the denial.

NOTICE

- Public body did not post in a conspicuous location at its administrative office or on the public body's website a notice setting forth: the rights of any person to inspect the public body's public records, the public body's responsibility to make public records available for inspection, the procedures for requesting inspection of public records, the procedures for requesting copies of public records, and/or reasonable fees for copying public records

DEADLINES (For purposes of deadlines imposed by the IPRA, the date the request is received is not counted)

- Inspection was not allowed within three (3) business days and the public body did not timely send a written "three-day letter" to the requester explaining when the records would be available or when the public body would respond to the request.
- The public body did not allow inspection or otherwise respond to the request within fifteen (15) calendar days from the date the custodian received the request.

FEES

- The public body charged fees in excess of \$1.00 per printed page for documents 11"X17" or smaller, or charged fees that exceeded the actual costs to copy the records.
- The public body did not provide a receipt upon request.

DETAILED EXPLANATION OF ALLEGED IPRA VIOLATIONS (Required): Please provide a description of the actions taken by the public body that violated the IPRA, including specific dates and why you believe the IPRA has been violated.

It has already been over a month
and New Mexico State Police has
not provided any documents at

have requested. They have not given me an estimated date as to when the documents will be provided. I needed these documents for a court hearing. I sent an email to New Mexico State Police on September 21, 2016 asking for an estimated date and I have not received any response as of 9/27/2016.

Thank you,

Daniel Pineda Jimenez

ADDITIONAL INFORMATION: Please provide a copy of your original inspection request (if written), and any documentation or evidence you have regarding the alleged IPRA violation.

I have attached all emails.